

CASE NO. 08cv 1589

ATTACHMENT NO. 6

EXHIBIT _____

TAB (DESCRIPTION) _____

1 it's not in the position of charting new waters,
2 the suggestion is, in fact, that the Court
3 wouldn't be charting new waters, contrary to the
4 case, but, in fact, going to the waters that have
5 never been discovered.

6 THE COURT: Well, I think, to the contrary,
7 that the law in Illinois in this regard is pretty
8 well settled, that if the State elects to treat
9 this matter as a capital offense, one which would
10 make the defendant eligible for a capital
11 sentencing hearing if found guilty of first degree
12 murder, then, the jury is to be Witherspooned at
13 the outset. And the only way to avoid that is by
14 the defendant exercising, again, his pure right to
15 waive a jury at sentencing hearing, which he
16 has a right to do.

17 And I understand the difficulty with the
18 choice, but your motion to bar or to postpone
19 Witherspoon is denied.

20 MS. PLACEK: One thing:

21 In rereading the transcripts this
22 weekend involving the motions that were had by
23 previous Counsel, at the end of that motion, the
24 Assistant State's Attorneys -- not these two

1 gentlemen, but others -- in fact stated that at
2 that time there was a likely possibility that, in
3 fact, there would be a request made by the State,
4 should a finding of guilty on first degree murder
5 in the accompanying eligibility phase, that the
6 State would in all probability ask for the death
7 penalty.

8 To formalize the record, Judge, what I
9 would be asking at this time is I would be asking
10 for an affirmative statement by the State's
11 Attorney.

12 THE COURT: Mr. Murphy.

13 MR. MURPHY: Judge, I thought it was very
14 clear to the defendant.

15 But if it is not, we are treating this
16 case as a capital case.

17 MS. PLACEK: That means there will be such a
18 request at the end?

19 THE COURT: I don't know whether it means
20 that or not.

21 It may very well be at the conclusion
22 of the State's case, even with a finding of
23 guilty, that the State may elect not to proceed to
24 the capital sentencing.

1 That is a prerogative up until -- at
2 any point.

3 MS. PLACEK: You see, that's the problem I
4 have with the Witherspooning issue, Judge.

5 THE COURT: We'll cross that at the
6 appropriate time.

7 But you certainly don't want the State
8 to be bound by its pre-trial determination that
9 they'll seek the death penalty, and not be in a
10 position to back away from that without having
11 committed error. That would seem to me to be a
12 rather peculiar position for the Defense to be
13 in.

14 MS. PLACEK: The peculiarity of the defense's
15 position, unless I get a firm affirmative, is the
16 fact that, number one, in denying my previous
17 motion, that, in fact, we have, so-to-speak, a
18 bifurcated jury, one as to guilt or innocence,
19 just for purposes of the record in clarity, and
20 also as to the Witherspooning issue. And the
21 State, so-to-speak, being able to have the
22 ultimate decision after the case, I am forced to
23 make the decision dealing with Witherspooning not
24 fully -- not fully informed.

1 Now, I understand that the Court is
2 saying, and I understand what it interprets the
3 State as saying, that it seems they might ask for
4 the death penalty; so, therefore, we have the
5 discretion of requesting Witherspooning. But then
6 again, they might not.

7 The point I'm having is that I'm forced
8 to advise my client, considering the Court's last
9 ruling, without being fully informed.

10 THE COURT: That's the nature of the Illinois
11 Death Penalty Statute.

12 MS. PLACEK: And that's why I believe it's
13 before the Illinois Supreme Court.

14 THE COURT: Well, it's been before the
15 Illinois Supreme Court on that ground for
16 arguments very similar to it a number of different
17 times.

18 The first time that it was there, if not
19 the first, near the first, in Ex. Rel. Carey
20 Versus Cousins. The Court decided on that very
21 issue that you're talking about, four-three.

22 MS. PLACEK: That's correct, Judge.

23 THE COURT: And have not seen fit to deal
24 with it since then, or when it has dealt with it,

1 has consistently said that the State is not
2 obliged to tell the defense prior to the actual
3 entry into a hearing -- a capital sentencing
4 hearing, that it seeks the death penalty.

5 So, that being the case, it seems to me
6 that up until they actually commence the hearing,
7 they have the option to abandon. But that does
8 not preclude Witherspooning at this stage, because
9 the defendant is ostensibly eligible.

10 With all due respect to the Court, and
11 not meaning to go on with the argument, in Ex.
12 Rel. Carey Versus Cousins, the case did not deal
13 with the specific issue that I'm speaking of.

14 Just for the record, the issue that I'm
15 speaking of, Judge, is that as an attorney I have
16 to be able to advise my client competently, and
17 with all information in order for the 8th and for
18 the 14th Amendments to come into play.

19 I'm stating to this Court that since the
20 ambiguity, which again was not addressed in the
21 case cited by the Court, has come up in this case,
22 since the Court has made a ruling, and not wishing
23 to flatter myself, has concurred, in fact, with
24 the Defense's theory that a Witherspoon jury is.

1 in fact, a guilty prone jury, I am, so-to-speak,
2 between a rock and a hard place, because the
3 unbounded discretion of the State limits my
4 client's right to be fully advised intelligently
5 by Counsel.

6 THE COURT: Let me suggest to you, Ms.
7 Placek, that I have not concurred with you in
8 terms of my concurrence meaning that the law is as
9 we -- you state it being.

10 What I'm saying to you is that my
11 understanding is, which is personal, that there
12 are no studies which even remotely suggest that a
13 Witherspoon jury is not a death prone jury, while
14 there are a proliferation of studies that suggest
15 that a Witherspoon jury is a guilt prone jury.
16 But Illinois does not accept that as being any
17 inhibitor whatsoever of Witherspooning.

18 MS. PLACEK: I will suggest it's never been
19 addressed in Ex. Rel. Carey versus Cousins.

20 And I am, again, allowing the Court to
21 go through those uncharted waters and set new
22 grounds, not limited by anyone, Judge.

23 THE COURT: I think the cases in Illinois are
24 sufficiently close, if not in one case, when you

1 put them together, Carey Versus Counsins, Daley
2 Versus Hepp, People versus Lewis, and the
3 proliferation of other cases, leads one, it seems
4 to me, inescapably to the conclusion that not only
5 is Witherspooning permissible, but is a must, is a
6 must.

7 I come to the conclusion that I abdicate
8 the function of applying the law, if at this stage
9 I sua sponte decide not to Witherspoon this jury.

10 And I believe that given time and an
11 inclination so to do that the Supreme Court would
12 under its supervisory power, order me to
13 Witherspoon this jury, if the State could get
14 to the Supreme Court in time to do it.

15 But I'm not going to -- I believe that
16 to be the status of the law. I'm going to
17 Witherspoon the jury. And if it's error, that
18 proposition can be dealt with at some future time.
19 But as I read the law right now, I don't have a
20 choice. I don't have a choice.

21 What's the next motion?

22 MS. PLACEK: Based on the State's -- Or
23 based on the State's ambiguity to make a firm
24 decision, based on the Court's ruling in this

1 matter, based on the decisions previously cited
2 stating -- Strike that -- not the decisions, but
3 surveys and findings stated as to guilt prone, and
4 based on, again, the exception that we are taking
5 to the Court's ruling, we would be at this time,
6 although feeling limited to truly advise our
7 client and have him fully exercise his right to
8 process, we are prepared now to answer the Court's
9 question.

10 MR. MURPHY: Judge, perhaps I can help
11 Counsel here.

12 If I didn't make myself clear -- I
13 thought I did to Counsel previous to this. If the
14 defendant is convicted, and if he's eligible, we
15 will be seeking the death penalty.

16 If that is not clear enough, I don't
17 know any other way to express it.

18 THE COURT: Well, what she's complaining
19 about, and no matter what you say at this point,
20 it is still ambiguous, at least to the extent that
21 next week you could change that position without
22 any penalty whatsoever. And during the course of
23 the trial you may, for any number of reasons, have
24 occasion to rethink the propriety of that request

1 and simply fail to ask for it.

2 And that's the kind of situation that
3 Counsel speaks of.

4 And I suggest that that does not worsen
5 her position in any way whatsoever.

6 As a matter of fact, it probably is to
7 the advantage of the defendant, but that's neither
8 here nor there for me to decide.

9 What's our next motion?

10 MS. PLACEK: I was suggesting, Judge, that we
11 are able to answer the Court's question, based on
12 the fact that we have a signed waiver at this
13 time, Judge.

14 THE COURT: I will take his jury waiver on the
15 sentencing phase at a later time. You may hold it
16 now.

17 What's our next motion?

18 MS. PLACEK: The State has several motions
19 they filed, Judge, I believe.

20 THE COURT: What do you want to discuss?

21 MR. MURPHY: Judge, we filed a motion to
22 inform the Defense of our intention to proceed on
23 the basis of felony murder theory.

24 That motion was filed on January 14th,

1 1991. Specifically, I think it's stated in the
2 motion there are various felonies which the
3 defendant is charged with, which are not
4 specifically made as counts in the felony murder
5 charge.

6 There are only two counts of felony
7 murder, one is based on criminal sexual assault,
8 the other is based on kidnapping.

9 There are other felonies, Judge, which
10 are included in the Indictment, and specifically,
11 Judge, I'm concerned with Count 10, Judge,
12 aggravated criminal sexual assault. And we do not
13 wish to be precluded from arguing that as a theory
14 of prosecution, and a theory under the felony
15 murder count statute. We wish to be able to
16 proceed on that basis.

17 THE COURT: Defense?

18 MS. PLACEK: Any way, Judge, be that as it
19 may, we would take exception to the rule. We
20 would suggest that the cases cited by Counsel, I
21 don't know whether the Court has a copy of the
22 motion, but it in fact deals with a case where the
23 State charged merely first degree murder, but
24 evidence, in fact, during the trial came out where

1 there was an involvement with a possible felony
2 murder. And that, as a matter of fact, takes up
3 one of my motions in limine.

4 I would ask that the State be limited
5 only to those felonies, in fact, charged within
6 the four corners of the indictment.

7 The suggestion to allow them such a
8 scatter-gun approach would, in fact, suggest that
9 the defendant has to -- and again in such a case
10 where the evidence of sexual assault is
11 speculative, at best, and circumstantial at least
12 because of supposed disrobed clothing, since, in my
13 pathology, I have no other evidence of same.

14 But, again, allowing them this sort of
15 scatter-gun approach would allow them the latitude
16 of conjection, not only the latitude of
17 conjection, but the latitude of, quite frankly,
18 surprise; since, in fact, specifically it doesn't
19 state as to the situation, and I'm speaking of the
20 factual situations, that would give rise to these
21 additional felonies.

22 THE COURT: Mr. Murphy, what's the name of
23 the case that you are relying on?

24 MR. MURPHY: Judge, there are two cases that

1 I relied on, which are stated in the motion.

2 One is People versus Wilson, which can
3 be found at 61 Ill. Ap. 3d, 1029, 378 NE 2d.
4 That's a 1978 case, your Honor.

5 I'm also relying on People versus Allen
6 which is a Supreme Court case found at 56 Illinois
7 2d 536.

8 Your Honor, I believe the cases address
9 that issue.

10 The only question is, Counsel makes a
11 comment about surprise. Well, Judge, this motion
12 was filed almost three weeks ago.

13 MS. PLACEK: I'm not commenting about the
14 surprise of the motion, not meaning to cut Counsel
15 short. I'd be asking for specificity, that's what
16 I'm speaking of, Judge.

17 THE COURT: That motion is taken under
18 advisement. And I will try and rule on it either
19 before the close of the day, or tomorrow.

20 MR. MURPHY: Judge, if it would be of more
21 assistance to Counsel, as far as that's concerned,
22 with regard to the specificity, I'm primarily
23 concerned with Count 10.

24 MS. PLACEK: This doesn't, quite frankly --

1 THE COURT: That's not the level of
2 specificity that she's talking about.

3 But we will deal with that if I grant
4 the motion.

5 You have a motion for the introduction
6 of other crime evidence?

7 MR. MURPHY: Judge, I did file a motion with
8 respect to that. I'm not sure how the Court wants
9 to handle that procedurally. We filed a motion --

10 THE COURT: Let me suggest to you what I
11 think is going on.

12 If I'm in error, you're free to
13 interrupt me, and I will hear you. But I think I
14 have somewhat of a notion of what we are talking
15 about.

16 It is my understanding that you intend
17 to show that at some prior time a few years before
18 this occurrence, that the defendant was involved
19 in an occurrence which resulted in a finding of
20 guilty after a trial that resembles, in some
21 respect, this occurrence.

22 And you intend to show that prior --
23 the circumstances of that prior involvement. Am I
24 correct, generally?

1 MR. MURPHY: Judge, generally, that's
2 correct.

3 There's actually two incidents, one was
4 the conviction, which -- this is a conviction for
5 aggravated criminal sexual assault and kidnapping.
6 That is already in the Answer to Discovery we
7 filed some time ago under the section for proof of
8 other crimes.

9 We filed a motion to also include
10 another case, separate and distinct case from the
11 matter in which the defendant was convicted on,
12 which is also on his criminal history sheet, which
13 has been tendered. So, there are two separate
14 matters, Judge.

15 THE COURT: How long before the occurrence in
16 question, or how long before August 1st, 1988, did
17 these others occur?

18 MR. MURPHY: Judge, they both occurred in the
19 summer of 1984. One on --

20 THE COURT: At least four years prior to this
21 occurrence?

22 MR. MURPHY: Yes, Judge.

23 THE COURT: How -- What purpose are you
24 showing these other occurrences? For what

1 purpose?

2 MR. MURPHY: Judge, there are a number of
3 reasons that we are seeking to introduce the
4 evidence in these other matters. Primarily, it
5 would be for the purpose of intent, lack of
6 consent on the part of the victim, identification,
7 common design and modus operandi.

8 And, your Honor, I have an argument
9 prepared in relation to these cases whenever the
10 Court wants to hear that.

11 MS. PLACEK: With all due respect to Counsel,
12 and again holding the rap sheet of the defendant
13 -- and I know this matter was touched on heavily
14 during the motion. I have -- and I don't believe
15 since I'm reading by CB number, not only
16 indictment number -- I have September 1984, only
17 one conviction dealing with a case 84 10287 under
18 CB No. 192095.

19 With due respect to the Court, and due
20 respect to the Assistant State's Attorney, that's
21 a matter I have become well aware of, because that
22 was dealt with during part of the motion under a
23 -- when we raised Discovery.

24 We have no knowledge of any other

1 conviction for any other sex case that this
2 defendant --

3 THE COURT: He's not claiming a conviction
4 for any other sex case. He says that the
5 defendant was involved in another occurrence,
6 which may have been uncharged, that he's permitted
7 to show. That's what he's saying.

8 MS. PLACEK: Well, with due respect to the
9 State, and again, I have received no information.

10 THE COURT: I'm not concerned about the
11 information that you have at this time. I'm
12 trying to get a -- to approach it in another
13 respect.

14 My problem is, obviously, remoteness and
15 how it tends to show that which is permissible to
16 be shown by other crime evidence as distinguished
17 from a propensity to commit crime. And secondly,
18 whether or not the prejudicial affect of showing a
19 crime that remote outweighs its probative value.

20 MR. MURPHY: Judge, one explanation I can
21 give you is the second matter in which the
22 defendant was convicted on.

23 Our information is that it occurred on
24 September 3rd, 1984. It's also our information

1 that the defendant was in jail from the date of
2 that offense, in custody, until his release,
3 because he was convicted on that matter on April
4 25th, 1988.

5 MS. PLACEK: Since I was supplied the rap
6 sheet, which I attempted to go -- and never
7 supplied -- and again, because I office at 26th
8 Street, Mr. Lufrano has been accepting Discovery
9 and has been trying to get me everything through
10 inter-office mail, I would suggest, Judge, that
11 this is the last rap sheet that both --

12 THE COURT: Miss Placek, I'm not interested
13 in his rap sheet at this point, and whether or not
14 the occurrence that is uncharged appears on that
15 rap sheet. That's not the issue.

16 MS. PLACEK: I understand.

17 But now Counsel is now saying there's a
18 second matter of conviction.

19 THE COURT: No, he's not. He says there's a
20 prior conviction, and he has a prior uncharged --
21 perhaps uncharged similar act. And that's what
22 we're dealing with.

23 MS. PLACEK: Fine, Judge.

24 MR. MURPHY: Judge, perhaps if it's of any

1 assistance to Counsel along that line, I know the
2 Court is eager to move along. That other matter
3 is on the rap sheet of the defendant in Counsel's
4 possession. It was charged as a battery, and it wa
5 SOL'd. And that is indicated on the rap sheet
6 that she has in her hand.

7 MS. PLACEK: That's fine, Judge.

8 Judge, Counsel is now saying manner,
9 mode, exactly to the fingerprint test of the
10 Illinois law, and I agree with the Court it's not
11 only separated by time, but the separation becomes
12 even greater when we have a non-convicted battery

13 THE COURT: Well, the fact that he's not
14 convicted of it is not very relevant for my
15 purposes, at any rate.

16 It may be relevant for you to show that
17 to the fact-finder, if, in fact, the State is
18 permitted to bring it out. But in the analysis
19 that I'm trying to go through, it does not make
20 any difference whether he was convicted or ever
21 charged with it.

22 My problem is remoteness and the
23 prejudicial effect of it, and what is sought to be
24 shown by it. And if all that we are trying to

1 show is modus operandi, then that so-called
2 signature crime, you're going to have to show me
3 either by -- presentation how the defendant's
4 signature is connected with those occurrences.

5 And if we're talking about identity and
6 intent, my initial reaction is it's too remote to
7 show identity and intent.

8 Proximity in time, proximity in place
9 cannot be shown by a crime that was four years
10 old. And thus, it looks -- it begins to look like
11 what the Courts have always condemned, the
12 utilization of a prior crime for its prejudicial
13 effect as opposed to its probative effect.

14 And, as I have said a number of times,
15 it's very difficult for me to rule in limine on
16 these kinds of questions.

17 The two of you know far better than I
18 know at this point or may have ever known as to
19 what you expect your evidence to show. And it is
20 only when a firm evidentiary basis has been laid
21 am I anywhere close to being able to rule
22 correctly on this issue.

23 Consequently, I'm going to at this point
24 bar the State from introducing other crime

1 evidence.

2 When the State has laid the proper
3 predicate and feeling that it has put in the
4 proper foundational basis to bring forth the
5 evidence that it seeks to introduce, the issue can
6 then be brought back to my attention. And I will
7 rule at that time definitively whether or not you
8 will be permitted to show the other crimes. And I
9 will be in a position, hopefully, to have a
10 factual basis on which I can rule.

11 Now, I invite your attention to one or
12 two of the other cases that were tendered to me in
13 connection with another matter that I have under
14 consideration, which talks about remoteness and
15 how that affects the admissibility of other crime
16 evidence.

17 And this clearly is remote. It's four
18 years old, and it does not, in my judgment,
19 qualify for any purpose at all, except, perhaps,
20 modus operandi, signature crime.

21 But the signature has to be clearly
22 written and not ambiguous and not speculative, and
23 it must be so clear that reasonable minds would
24 say that he who committed the first necessarily or

1 more probably than not is involved in the
2 commission of the second. That's what modus
3 operanti proves. And that's the standard that
4 we're going to go by.

5 What's our next motion?

6 MR. MURPHY: Judge, the People would make a
7 motion in limine with regard to the Rape Shield
8 Act, which is under Chapter 38, Section 115-7. And
9 in particular, Judge, we would be asking the Court
10 to order the Defense not to elicit any evidence
11 regarding the victim's prior sexual activity or
12 reputation for sexual activity, or make any
13 inference with regard to her prior acts of sexual
14 activity.

15 That area is protected under the Rape
16 Shield Act, although we feel there is no evidence
17 in any event. Clearly, the Statute and the case
18 law states that this type of evidence is not
19 relevant and is improper for the Defense to elicit
20 in a case such as this.

21 THE COURT: Ms. Placek.

22 MS. PLACEK: With all due respect, Judge, the
23 Rape Shield Act goes as to the living people.
24 This young lady is deceased.

1 Unless the Court grants our motion in
2 limine or in the alternative our motion as to
3 Brady material integrally a part of the Defense
4 case and strategy in this matter, because to
5 refresh the Court's memory, and not allowing the
6 Court to rule in a vacuum, the Defense made an
7 allegation during the hearing for the Motion to
8 Quash the Arrest that, in fact -- or rather --
9 strike that.

10 The State made an allegation that, in
11 fact, the reason that the defendant was
12 voluntarily asked to go to the station was because
13 he was the last person to see the victim alive;
14 that he was, in fact, characterized as her boy
15 friend and/or lover.

16 And secondly, Judge, that this pointed
17 to him as the only one who would be in a position
18 to do this.

19 We brought out, and again this will be
20 spoken to later in our Brady motion, that there
21 was one -- that this young lady was not -- let me
22 put it this way, exactly naive; that she and her
23 then guardian had many fights over the men that she
24 had, again, lessening the motive of my client to

1 possibly be the -- strike that -- lessening --
2 yeah, that's right, the motive of my client to be
3 the possible one who did this; that her guardian
4 knew that there were many men -- and I'm using
5 the word, men -- that she went with; that there
6 was a stepfather who, in fact, she often ran to
7 when she had fights with this legal guardian and
8 stayed at his apartment, viciating the fact that,
9 in fact, my client was the last one to see her
10 alive.

11 And not only that, and again,
12 minisculily touching on my Brady motion, the fact
13 that my client was not the last one to see her
14 alive; that there was a report that she was seen
15 and to put it quite mildly, in a disreputable
16 section of the city soliciting, and that in fact,
17 the guardian and the police went out looking for
18 her days after my client was last seen with her.

19 Therefore, Judge, I would suggest that
20 not only is the Rape-Shield Act not designed to
21 protect this matter, but, I'm speaking of a
22 murder, it's rather suggested and was passed to
23 prevent embarrassment to prosecutrix in rape
24 cases.

1 But I would suggest that the probative
2 value, as stated by myself and can be shown to this
3 Court as part of the motions' transcript, far
4 outweighs any attempt for the State to hide the
5 true character of the victim in this case, Judge.

6 MR. BRADY: Judge, in response.

7 First of all, there's two reasons this
8 should not be elicited. One, again, under the
9 Rape-Shield Act it's improper.

10 THE COURT: Let me answer Miss Placek's
11 argument, which seems to have some degree of
12 attraction as far as I'm concerned, that the Rape-
13 Shield Act is designed to protect living persons,
14 and we should not apply the act beyond the
15 protection that it was designed for.

16 It seems to me that that analysis, that
17 is to say, that the Act was designed to protect
18 living persons from harassment and embarrassment,
19 and that, obviously, is not the case with this
20 particular young lady, as Miss Placek says.

21 Unfortunately, Denise Johnson is beyond
22 any embarrassment or humiliation that we can
23 impose on her. But yet, the defendant has a due
24 process right to put before the trier of fact the

1 relevant evidence.

2 And I'm not saying that this evidence is
3 relevant, but I am trying to get you to
4 articulate, if you can, or if you care to, the
5 reach that you think the Rape-Shield Act has.

6 MR. MURPHY: Judge, I don't know. I would
7 have to read a little bit about it.

8 The question has never come up, and I
9 really don't know the answer to that question.

10 But nonetheless, Judge, even if you put
11 that question aside, the next question with
12 respect to that evidence is relevance.

13 Counsel made reference to, in her
14 response to our motion, something about the
15 victim's character. Well, Judge, what does that
16 have to do with what did or didn't happen this
17 particular night, any evidence about her past
18 activity, which we submit there is none?

19 I know that's neither here nor there for
20 purposes of this motion; but nonetheless, Judge,
21 what does that have to do with this particular
22 case, except to prejudice the jury against the
23 victim and plant a seed in their mind something
24 about the victim and have them, perhaps, not make

1 a decision based on the evidence?

2 THE COURT: That, again, is a question that I
3 can't answer, because I don't know the evidence,
4 except as I recall some of it from the hearing on
5 the motion.

6 I, again, am pretty much aware that
7 there was an allegation that the defendant was the
8 last person to be seen with the victim alive.
9 There's also some contradiction of that. There
10 is some contradiction of that, and it arises out
11 of the asserted, if not proven, propensity for
12 loose conduct, is the best word I could use to
13 describe what the Defense ascribed to the victim
14 in this case.

15 Now, whether that's going to ever become
16 relevant, I'm not able to determine, based on what
17 I know about the facts of this case at this point.
18 But should it become relevant, I don't think that
19 the Rape-Shield Act would prohibit its
20 introduction necessarily.

21 Now, I'm fully aware that you can't --
22 even -- even under my analysis of the Rape Shield
23 Act, we're not going to go into an excursion of
24 this young girl's background for sagacious reasons

1 or pure interest or anything of that nature.
2 We're going to -- if at all, deal with that which
3 is relevant to the defendant's right to defense,
4 and bring relevant circumstances before the jury.
5 And that's the extent of it.

6 And again, I can't answer your question,
7 nor can I rule on your motion without further
8 background.

9 Mr. Cassidy.

10 MR. CASSIDY: From our last trial we did
11 together, we had a lot of sidebars in certain
12 areas.

13 THE COURT: We may have some more.

14 MR. CASSIDY: We make an objection -- and the
15 witness is on the stand, and we object. And
16 there's an inference there where the jury says:
17 What's the State trying to hide? We want to avoid
18 that in this case.

19 Counsel stepped up and told you there
20 was evidence that she was out prostituting in an
21 area of Harvey or in this area of Chicago. That's
22 what she told you.

23 We have no information to that effect.
24 There's nothing in the police reports that this

1 girl was ever sleeping with other men, ever had
2 sex with another man, nothing at all. This is
3 total innuendo.

4 We don't want to be put in the
5 position that we have to sit here and make
6 objection after objection to questions about her
7 possible prior conduct, when there is no prior bad
8 history on her part, if you want to call it bad
9 history.

10 THE COURT: Are you going to postulate the
11 proposition that this defendant was the last
12 person to be seen with this young girl alive?

13 MR. CASSIDY: Yes.

14 THE COURT: Then, he has a right to meet
15 that.

16 MR. CASSIDY: Yes, he does.

17 THE COURT: If it is the theory that she was
18 seen subsequent to being with him involved in
19 whatever activity she may have been involved in,
20 the fact that the activity may be illegal or
21 immoral wouldn't prohibit him from showing that.

22 Suppose he says that she was seen after
23 being with me, she was seen playing little league
24 baseball. You certainly would allow that.

1 Now, the fact that he may show that she
2 was seen prostituting some place is not going to
3 bar it simply because the evidence -- the conduct
4 that she was engaged in is immoral or illegal.
5 That's all I'm saying.

6 And I don't know what the evidence is
7 going to show. If it's pure speculation and if it
8 lacks any foundation for admissibility on other
9 bases, that's a different thing. But on pure
10 relevance grounds, it may very well become
11 relevant, and we will have to see.

12 You say it isn't relevant. The Defense
13 says it is relevant. And I'm in no position to
14 answer that as a matter in limine. Perhaps when
15 we get into this, I will be able to answer it.

16 MR. MURPHY: Judge, we do have another
17 motion, but the only motion -- the only thing
18 this is regarding is sexual activity. This is
19 all we're focusing on.

20 The motion is with respect to sexual
21 activity of the victim with other men, her
22 reputation for sexual activity with other men, or
23 any inference --

24 THE COURT: Well, her reputation of sex with

1 other men, I would not think is relevant.

2 MS. PLACEK: What came out during the motion
3 and what's alleged in the police report, and I'm
4 somewhat surprised, suggests and then gives the
5 street address in Chicago where I got this
6 information, I got it from the General
7 Supplementary Report. But irrespective of that, the
8 problem is there was an allegation and there was
9 an argument made by their brother State's
10 Attorneys during the motion -- during the
11 argument on the motion to quash the arrest that,
12 in fact, he was the one.

13 And when I speak of he, I'm speaking of
14 the defendant, was the only one who was bothering
15 her romantically or sexually, if you will.
16 Therefore, he was the one who was last seen with
17 her; therefore, he was the one who, in fact, did
18 this rape murder.

19 I'm suggesting to the Court that in our
20 figuring out from the information we received and
21 the information that we have contained within the
22 street files, and that's what was brought forward
23 to the motion, that the State should not only be
24 precluded in opening statements from making a

1 false comment that he was the last one seen with
2 her, or making the statement that he was possibly
3 -- and again I'm referring to the testimony in
4 the motion of her guardian that he was the only
5 one who was romantically interested or dating her
6 at that time, Judge.

7 THE COURT: Well, again what becomes relevant
8 depends upon the progress and the direction that
9 the evidence takes.

10 If the State makes attributions about
11 the defendant's conduct, it may also make
12 rebuttal. Matters which would not have been
13 relevant otherwise can become relevant at any
14 moment the State says, if the State attributes to
15 the defendant conduct that requires -- well,
16 let's -- If the State attributes to the defendant
17 conduct which can be refuted but must necessarily
18 involve conduct by the victim, which is either
19 protected by the Rape-Shield Act, or is otherwise
20 not admissible in the defense case in chief, then
21 it may very well become relevant.

22 And all I'm saying to you primarily is,
23 as in most instances when we are talking about
24 matters in limine, is that I can rule

1 definitively, and I'm not about to bar the State
2 or you from making statements in your opening.

3 I would hope that one would be cognizant
4 of the fact that what you say in opening can come
5 back to hurt either side.

6 I'm going to, of course, repeatedly tell
7 the jury that your statements are not evidence.
8 And you can do, therefore, with your opening
9 statements, what you choose primarily, because,
10 again I'm not able to tell what the evidence is
11 going to be.

12 MS. PLACEK: With all due respect, Judge, I
13 in my motion in limine, wish to preclude the State
14 from doing that.

15 THE COURT: I'm not going to do that.

16 There is no way that I can preclude the
17 State from telling the jury what the evidence is
18 going to be, unless I know beforehand that it is
19 clearly impermissible. And I don't know what the
20 evidence in this case is going to be.

21 MS. PLACEK: Which brings us to an
22 interesting --

23 THE COURT: And the same is also true for
24 you.

1 I can't tell what your evidence is going
2 to be, if any. You're not required to put on any.
3 But if you decide to put on evidence, there's no
4 way I can tell you what it is.

5 That is one of the reasons why I'm not
6 going to grant the motion of the State under the
7 Rape Shield Act. I can't tell yet. It splits
8 both ways, and we'll have to see how it goes
9 along.

10 But you can't try the case to me
11 piecemeal and ask me to rule on every piece of
12 evidence that you anticipate being proffered by
13 the State, or the State by the defense. We'll
14 have to try the case before the jury, and we'll
15 rule on the evidence as we hear it together
16 in court.

17 MS. PLACEK: One interesting thing, though,
18 Judge, comes up. Judge, in reading the
19 professional code of ethics, the Prosecutor --
20 there was always an old saying that the Defense
21 lawyer can never commit reversible error, the
22 Prosecutor said. The A.R.D.C. seems to take a
23 different view of it. And specifically I'm
24 speaking of the argument of the defendant being

1 the last person to see her alive.

2 And in regards to the canon of ethics
3 newly adopted by the Attorney Registration and
4 Disciplinary Commission, number one, that a
5 Prosecutor, when having evidence to the contrary
6 cannot knowingly mislead the trier of fact or, in
7 fact, it then becomes a violation of his
8 professional responsibility.

9 I suggest, Judge, unless the Prosecutor
10 -- and it was not brought out, again, during the
11 motion, so I must see it as true and correct, can
12 refute the fact that there was a statement, it was
13 both cross and direct, that this person was seen
14 alive after the date and time with the defendant
15 she was seen with other people.

16 There was cross examination of Officers
17 involving that. And there was not only the cross
18 examination of officers, but, in fact, the
19 guardian was picked up and taken to the area where
20 she was to look for her by the police. The
21 ethical standards require that these Prosecutors,
22 unless they wish to violate their professional
23 ethics, refrain from, in fact, making that
24 statement in opening statements, and not only

1 when they know to the contrary and have never
2 disavowed the police reports containing that
3 statement, Judge.

4 THE COURT: Miss Placek, I'm sure you are
5 aware of the holding in People versus Himmel
6 (phonetic spelling) that includes you, that
7 includes Mr. Lufrano, that includes me, that
8 includes Mr. Simpson, and that includes Mr.
9 Cassidy.

10 So, we are all bound by the Code of
11 Professional Responsibility. And I'm going to
12 make certain that the Code governs everybody by
13 saying to you that you have recourse from that.
14 That does not mean that I'm going to preclude or
15 try to enforce the Code of Professional
16 Responsibility. I'm going to leave that to the
17 A.R.D.C.

18 MS. PLACEK: The police said that she was
19 seen after the --

20 THE COURT: Miss Placek, this is not a Q and
21 A between you and the State's Attorney.

22 MS. PLACEK: I just want to plea my standards
23 so I know what action I have to take.

24 THE COURT: Are there any other motions we

1 have to deal with?

2 MR. MURPHY: Judge, I know by making this
3 motion, apparently, we have opened a door to a
4 Pandora's box of issues. But, again, Judge, I
5 don't think it's a complicated motion.

6 And I know it's difficult for the Court
7 to rule in matters in advance before hearing the
8 evidence, but, Judge, what we're referring to is
9 evidence of prior sexual activity between the
10 victim and other men.

11 How in any way can that be relevant to
12 anything that's at issue in this trial?

13 THE COURT: Probably isn't, Mr. Murphy. And
14 if it is not relevant, it will not come before the
15 jury.

16 On the other hand, I can't tell. And
17 what you're asking me to do is to accept your
18 assertion, which I would be most happy to do,
19 except that I have a contra assertion coming from
20 the Defense, which I'd like to accept, but I'm
21 reluctant to do.

22 And so, I don't know. I have no way of
23 choosing between the two of you who is more nearly
24 accurate as to what the evidence is going to show.

1 As we begin the hearing, it will become
2 more clear to me as to which way I should rule,
3 and that doesn't put an undue hardship on either
4 of you, because both of you -- and I see by the
5 size of your file, your respective files, that I
6 could be studying your file for weeks without
7 knowing what your evidence is going to look like.

8 So, you know, you know, and when it
9 unfolds, I will know, and I will try to rule and
10 rule carefully and accurately as I can.

11 MR. MURPHY: Judge, we're just asking, and
12 apparently it's impossible. Even if you assume
13 that everything the Defense Counsel has stated is
14 accurate, how in the world could there be any
15 relevance to that?

16 THE COURT: I don't know.

17 MR. MURPHY: The parties involved don't have
18 a right to have a motion in limine with respect to
19 evidence which is irrelevant.

20 THE COURT: You have a right to bring the
21 motion, Mr. Murphy, and you have exercised it.
22 And I have a right to refuse or decline to rule on
23 it until I am in a better posture. And that's the
24 right that I'm exercising.

1 If that is frustrating to you, I
2 empathize with you. It's frustrating to me, too,
3 and I empathize with you.

4 But I do not intend to try the case in
5 limine. And I think that's a fair position to
6 take with both sides.

7 I will hear you evidence, and if I
8 determine it's not admissible, I will not permit
9 it.

10 I'm going to send for the jury.

11 Have I ruled on all of your motions or
12 discussed all of your motions?

13 MR. MURPHY: I had two other motions.

14 One, with respect to any evidence
15 regarding the victim Denise Johnson being a
16 runaway.

17 I also had another motion about the
18 victim being seen the next day, because based on
19 my understanding, that's at least double-hearsay.

20 In view of the Court's ruling, it would
21 be fruitless at this point to make those motions.

22 THE COURT: Pretty much.

23 MR. MURPHY: I would indicate to this Court
24 there is also potential for prejudice to the

1 State. The jurors could hear allegations that
2 are not evidence and can have a very prejudicial
3 effect on the State.

4 And I think it's important, if we can,
5 to try to resolve some of these matters before the
6 evidence is heard, if it has no relevance.

7 MS. PLACEK: I would agree with Counsel,
8 because there are also matters -- The Court has
9 made a statement as to the other crimes rule. Two
10 of our motions in limine -- in reading the file and
11 studying the evidence in this case, it would be
12 the suggestion of the Defense that the State is
13 unable to present a case. And thus, we want to
14 know where we stand.

15 THE COURT: Well, listen, let me say this to
16 you. I'm not going to go back and forth with
17 this conversation all afternoon.

18 I have indicated to you as clearly as I
19 can that all motions in limine are not susceptible
20 to definitive rulings.

21 If you want me to rule, I will take the
22 most conservative position that is possible to
23 take and deny the motion in limine on both sides,
24 and we will proceed to a hearing.

1 It is valuable in a significant kind of
2 way to have a motion in limine presented to the
3 Court. That does not mean that the Court is able
4 to rule on them as definitively as you might like
5 for it to be.

6 These are difficult issues of evidence.
7 And they cannot be ruled upon in a vacuum. And I
8 will not be forced to rule, or if I do, the
9 ruling is going to be in the most conservative
10 way. It's subject to review in all points,
11 anyway. So my ruling at this point is not
12 binding on anybody.

13 It certainly is not binding on me. And I
14 can reverse it, reconsider it at an appropriate
15 time in any event.

16 And so, it's really a guideline that I'm
17 not able to help you with at this point.

18 What motions do you have, Ms. Placek,
19 that have not been ruled on?

20 MS. PLACEK: We have a motion to dismiss
21 loosely based on a Brady violation, Judge.

22 I apologize. This is the first time
23 that the State would be getting a copy of this,
24 Judge, and that's my fault. I apologize because

1 I have been on trial for two weeks.

2 THE COURT: Have you had an opportunity, Mr.
3 Murphy, to read the motion?

4 MR. MURPHY: Yes, Judge.

5 THE COURT: You care to expand on it?

6 MR. PLACEK: Yes, Judge.

7 Respectfully, Judge, and referring the
8 Court's attention to the motion, one of the basis
9 for probable cause in this case was constantly
10 that the defendant was, and I quote specifically
11 from -- I quote specifically from the motion and
12 from police reports, that he was the best suspect
13 because he was the last person to see her alive.

14 I would point out that it was suggested
15 during the testimony brought out by the State,
16 rebutted by cross examination, that he was not
17 only the best suspect, but the best suspect
18 necessarily came from the point that all
19 information pointed that he, the defendant, was
20 the last person to see this victim alive.

21 My suggestion to the Court is that this
22 is all through the formal reports, in the
23 so-called street files, Judge. And again,
24 referring your attention to both the cross

1 examination of the matter, of the police officers,
2 of the youth officer, and also, Judge, to the
3 State linking this as a vital piece of evidence,
4 that it states that a person, in fact, gave them
5 information that she was on a certain street;
6 that the person -- And again, I'm speculating,
7 but it was known at the time.

8 If the Court looks at
9 the motion, I believe, if memory serves me right,
10 there was an objection when Defense Counsel
11 attempted to inquire of the police officer who
12 took the report as to who that person was.

L 13 In other words, to aid us in the
14 investigation, I believe the Court sustained on
15 the ground of relevancy as to the motion.

16 Since then we, through our
17 investigations have been unable to find this
18 person. This is one of the reasons why we have to
19 speak -- to argue so vociferously, if not
20 boringly to this Court to this one issue.

21 We feel, as shown both in the police
22 report -- and again, I'm speaking of the major
23 reports and in the motion, this is the major
24 linchpin in the State's theory of the case, since

1 we know there's information that directly
2 contradicts that, not only directly contradicts
3 that, but since, in fact, this information was in
4 the care and custody of the government, if you
5 will, through their agents, the police, since in
6 fact we can't find that anonymous source, because,
7 again, our problems is the police wishes neither
8 to disclose a juvenile or a confidential
9 informant.

10 Our suggestion is that we have a real
11 problem combatting the fact that this defendant,
12 even though untrue, according to report, not
13 disavowed by the State, was the last person to see
14 the girl alive.

15 THE COURT: State.

16 MR. MURPHY: Can we have a few moments,
17 Judge?

18 THE COURT: Mr. Hendricks, would you step up
19 here with your jury waiver, while the State is
20 considering that other matter?

21 MS. PLACEK: Your Honor, for purposes of the
22 record, we would be submitting a modified jury
23 waiver, since there is nothing specifically
24 dealing with sentencing.

1 THE COURT: Mr. Hendricks, your attorney
2 informs me that you desire to waive your right to
3 a jury at a sentencing hearing, if a sentencing
4 hearing becomes necessary in this case.

5 Is that correct, sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Before I can permit you to do
8 that, Mr. Hendricks, I am obligated to inform you
9 of certain rights that you have, determine that
10 you understand your rights, and that you are
11 waiving your rights freely and voluntarily.

12 Now, if at any time during the course of
13 our conversation you should change your mind and
14 decide you do not wish the Court to hear the
15 sentencing hearing if one becomes necessary, if
16 you will bring that to my attention I will
17 discontinue the conversation with you, and your
18 matter will be set for hearing before the jury,
19 if such a hearing becomes necessary.

20 Also, if I say something to you that you
21 don't understand, if you bring that to my
22 attention, I will restate it or rephrase it, until
23 you do understand.

24 Mr. Hendricks, in the event that the

1 jury should return a verdict finding you guilty of
2 the offense of first degree murder, and if the
3 State elects to proceed toward a capital
4 sentencing hearing, you have a Statutory right to
5 have the hearing held before a jury.

6 A jury is composed of 12 persons who
7 reside in Cook County. They would be selected by
8 your attorney and the State's Attorney, and it
9 would become their obligation to listen to all the
10 evidence adduced by the State in support of the
11 proposition that you are eligible for a capital
12 sentence, and that there are no mitigating factors
13 sufficient to preclude the imposition of the death
14 penalty.

15 During the first phase of the sentencing
16 hearing, the State would be required to prove
17 beyond a reasonable doubt that there exists one or
18 more Statutory aggravating factors which makes you
19 eligible for the imposition of the death penalty.

20 Your attorney would be given an
21 opportunity to cross examine each and every
22 witness called on behalf of the State, with a view
23 towards bringing out facts favorable to you.

24 You also have a right to call witnesses

1 on your own behalf. And I will assist you in that
2 regard by issuing subpoenas to compel the
3 attendance of witnesses on your behalf.

4 You, yourself, have a right to testify if
5 you so desire. On the other hand, if you choose
6 not to testify for any reason whatsoever, the jury
7 will not be permitted to take that into
8 consideration in determining whether or not the
9 State's evidence proved that you are eligible for
10 a capital sentencing beyond a reasonable doubt.

11 After the jury has heard the evidence,
12 the arguments of the attorneys and my instructions
13 as to the law that applies to this hearing, the jury
14 will retire to deliberate and determine whether or
15 not the State's evidence proved beyond a
16 reasonable doubt that you were eligible for a
17 capital sentencing.

18 Before the jury would be premitted to
19 return a verdict finding you eligible for a
20 capital sentencing, all twelve jurors, each one,
21 must agree that the State's evidence proved that
22 you are eligible for a capital sentencing, beyond
23 a reasonable doubt.

24 Should the jury return such a verdict

1 finding you eligible for a capital sentencing, the
2 case would then proceed to the second phase of the
3 sentencing hearing.

4 In that phase of the sentencing hearing,
5 the issue before the jury would be whether or not
6 there are any mitigating circumstances sufficient
7 to preclude the imposition of the death penalty.

8 At that point the State would call
9 witnesses, and your attorney, again, would be
10 given an opportunity to cross examine each and
11 every witness called on behalf of the State, with
12 a view toward bringing out facts favorable to you

13 Do you have a question?

14 THE DEFENDANT: That would be a second chance
15 to see if they wanted to keep it forward?

16 THE COURT: Yes.

17 After having found you eligible for
18 capital sentencing, the jury would then be
19 required to determine whether, in fact, the death
20 penalty should be imposed, or stated different,
21 whether there were any mitigating factors
22 sufficient to preclude the imposition of the death
23 penalty.

24 And during that phase of the hearing,

1 your attorney, again, would be given the
2 opportunity to cross examine each and every
3 witness called on behalf of the State, with a view
4 toward bringing out facts favorable to you.

5 You would also have a right to call
6 witnesses on your own behalf. And again, I would
7 assist you in that regard by issuing subpoenas to
8 compel the attendance of witnesses on your behalf.

9 You, yourself, would have a right to
10 testify if you so desire. Again, on the other
11 hand, if you chose not to testify for any reason
12 whatsoever, the jury would not be permitted to
13 take that into consideration in determining
14 whether or not the State's evidence proved that
15 there were no sufficient mitigating factors to
16 preclude the imposition of the death penalty.

17 Before the jury would be permitted to
18 return a verdict sentencing you to death, all
19 twelve jurors must agree that there are no
20 sufficient mitigating factors sufficient to
21 preclude the imposition of the death penalty.

22 If one juror does not agree, then the
23 death penalty could not be imposed, and the Court
24 would proceed to sentence you in accordance with

1 the law made and provided for the offense for
2 which you have been found guilty.

3 Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: On the other hand, Mr. Hendricks,
6 if you waive your right to jury at the sentencing
7 hearing, then, I, and I alone, will determine
8 whether the State's evidence proves beyond a
9 reasonable doubt that you are eligible for a
10 capital sentence.

11 And I, and I alone, will determine
12 whether or not there is sufficient evidence to
13 preclude the imposition of the death penalty.

14 Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Does your signature appear on
17 this jury waiver?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: When you signed that document,
20 was it your intention to give up and waive your
21 right to a sentencing hearing by a jury?

22 THE DEFENDANT: A Yes.

23 THE COURT: Has anyone forced you, threatened
24 you, or coerced you in any way to cause you to

1 waive your right to a jury at the time of
2 sentencing?

3 THE DEFENDANT: A No, sir.

4 THE COURT: Are you waiving your right to
5 hearing by jury freely and voluntarily?

6 THE DEFENDANT: A Yes, sir.

7 THE COURT: Then, let the record reflect that
8 the defendant has been advised of his Statutory
9 Right to a hearing by jury to determine his
10 eligibility for capital sentencing, and to
11 determine whether or not there are any mitigating
12 factors sufficient to preclude the imposition of
13 the death penalty.

14 The Court finds that he understands his
15 right, and that he is waiving his right freely and
16 voluntarily.

17 Mr. Hendricks, you and your Counsel may
18 return to Counsel table.

19 Mr. Murphy, are you prepared to answer
20 Counsel's motion to dismiss?

21 MS. PLACEK: Judge, for purposes of the
22 record, I am giving Counsel our police report,
23 which was tendered by the State, which they are
24 saying they never saw before.

1 THE COURT: Are you prepared to answer Miss
2 Placek's motion?

3 MR. MURPHY: Judge, first of all, I'd ask --
4 the Court has a copy of the motion.

5 I'd ask the Court to look at -- It's a
6 one page police report on which the motion is
7 based.

8 I would indicate that I have never seen
9 this report before today, and I --

10 MS. PLACEK: Well, I suggest that I also give
11 Counsel the other page that's specifically of
12 Mrs. Field, which explains that Denise had the
13 habit of socializing freely with older boys and
14 older men.

15 THE COURT: Mr. Murphy, the argument that you
16 have not seen the report is of no significance to
17 me.

18 A Brady violation does not depend upon
19 the good faith or bad faith of the Prosecutor.
20 The question simply is one of whether or not this
21 is material that should have been disclosed to the
22 defendant that was, in fact, not disclosed, and
23 the consequences of such a violation.

24 MS. PLACEK: For purposes of the record, I

1 got it from the State's Attorney.

2 I would point out that this was used
3 extensively. I got this as part of Discovery from
4 the office of the State's Attorney.

5 I would also point out that this was
6 used extensively and referred to and moved by us,
7 that copy, specifically, as a Defendant's Exhibit
8 as part of the motion.

9 The idea that they haven't seen it
10 before, Judge, I have no idea why. I would
11 suggest perhaps Counsel would like to look at our
12 file and see whether or not their brother State's
13 Attorneys hadn't passed on the report.

14 But this is what I was speaking of,
15 specifically about the right of the State's
16 Attorney when -- and the report that I was
17 referring to disavowing.

18 THE COURT: Let him respond, Ms. Placek. Let
19 him respond, if he chooses to. It's Brady
20 material.

21 MR. MURPHY: Judge, I'm going to ask for a
22 few more moments, if I can.

23 THE COURT: Gentlemen, I'm going to send for
24 the jury. It is --

1 MS. PLACEK: Judge, with all due respect, and
2 I think Counsel might agree with me, I'm free --
3 there are no -- Excuse me, I'm free, and whether
4 you want me or not, I'm yours for however this
5 takes.

6 I would not start a first degree murder
7 at this time, especially when Counsel -- I have
8 not had the benefit, like Counsel has mentioned,
9 of trying before you.

10 If they haven't seen this, then I would
11 suggest a lot of their other argument, since this
12 is part of the linchpin of several of our motions
13 -- I don't know whether Counsel would agree, but--

14 THE COURT: It is not necessary for me to
15 resolve that motion prior to commencing an
16 introduction of this case to a jury.

17 Meanwhile, they need time to look at it,
18 fine, they can look at it. But I'm not going to
19 sit here wasting time while they look at that
20 document, when we can be doing some other things.
21 And if it turns out that your motion has substance
22 and that under the provisions of 114-1 I can
23 dismiss this case, it's gone. That's all there is
24 to it.

1 I doubt very seriously -- Well, I
2 don't know whether that's the case or not. But
3 the curative power does not reach all the way to
4 the ultimate extreme of dismissing this case.

5 There are other ways in which we can
6 deal with that. But the probabilities are that
7 this case is not going to get dismissed, so, we
8 might as well get started with it.

9 MS. PLACEK: Before we get started, Judge,
10 give me five minutes.

11 THE COURT: I'm going to give you probably
12 more than that, since it's going to take more than
13 five minutes to get a jury down here.

14 MR. CASSIDY: I think we're ready to deal with
15 the motion.

16 THE COURT: Is it Brady material?

17 MR. CASSIDY: Should it have been tendered to
18 the Defense?

19 THE COURT: Right.

20 MR. CASSIDY: It's possibly relevant.

21 Sure, it should have been given, but she
22 acknowledged receipt of it.

23 THE COURT: Is it Brady material, not
24 something that you should give to her, but does

1 the law require that you transmit that document to
2 her under pain of sanctions consistent with Brady
3 versus Maryland in your judgment?

4 MR. CASSIDY: Judge, what's the question?

5 She tendered to us.

6 THE COURT: The question is whether or not
7 that document should have been tendered to the
8 Defense under Brady versus Maryland, or the
9 imposition of sanctions consistent with brady be
10 imposed?

11 MR. CASSIDY: I'd say yes, Judge.

12 THE COURT: All right.

13 Now, from what I understand, she's
14 saying, not that she is unaware of the existence
15 of the document, but an underlying person whose
16 identity is not ascertainable to her is relevant
17 to her defense, and should have been disclosed.
18 Not simply that piece of paper, but the identity
19 of the person that would be necessary for her to
20 appear in court. That person's identity should
21 have been disclosed. Do you agree?

22 MR. CASSIDY: You're assuming that that
23 person's identity was known.

24 THE COURT: Answer the question.

1 If the identity of the person was known,
2 should it have been disclosed?

3 MR. CASSIDY: If requested to, yes; if known,
4 yes.

5 THE COURT: Is it your contention that you
6 don't know, not you, not your office, but law
7 enforcement people of the State of Illinois do not
8 know who they are talking about in that document?

9 MR. CASSIDY: Well, read the document. I just
10 read the document.

11 THE COURT: I'm asking you, Mr. Cassidy, for
12 your help, if you will.

13 MR. CASSIDY: Sure.

14 THE COURT: You take the position that the
15 law enforcement people don't know who that person
16 is?

17 MR. CASSIDY: Right.

18 MS. PLACEK: Well, that's strange. Because it
19 speaks of the R.Y.C., which was discovered on the
20 motion as the Youth Officer, developed the
21 information from an anonymous source residing at
22 10537 South State.

23 So, the police officer talked to the
24 person, Judge.

1 THE COURT: Miss Placek, if you will give me
2 an opportunity, I will let you respond in any way
3 you choose.

4 Does Brady require you to come in
5 possession of that information, or can you simply
6 by denial and neglect, avoid the consequences of
7 Brady?

8 I don't mean you, personally, but I mean
9 anybody in the chain of law enforcement, from the
10 lowest patrol officer to the Attorney General of
11 the State.

12 Can they simply ignore this piece of evidence?

13 MR. CASSIDY: Not if it was known to them,
14 Judge.

15 THE COURT: Not if what was known to them?

16 MR. CASSIDY: If there's a police report made
17 and the police report indicates there's a known
18 person out there who saw the defendant, then, we
19 have a duty to tell them about it. But that's
20 not the case here.

21 THE COURT: You have a duty also to put
22 yourself in a position to know the identity of
23 that person.

24 MR. CASSIDY: Under your scenario, yes.

1 THE COURT: Now, you have a police officer
2 who is acknowledging the existence of an address
3 of an informant who resides at a specific
4 address.

5 MR. CASSIDY: Incorrect.

6 THE COURT: Then, I need to read the report.
7 If you will just give it to me, I will read it.

8 MS. PLACEK: You got it, specifically the
9 yellow'd out part by myself, Judge.

10 THE COURT: Mr. Cassidy, the officer who is
11 the author of this report is telling us that he
12 developed information from an anonymous source who
13 resides at a very specific address, gave him
14 information that the victim was seen on a specific
15 date at a specific time, at a specific place.

16 That anonymous source has to be, it
17 seems to be a reasonable conclusion, at least I
18 conclude, and you tell me in what way it is not
19 reasonable that that anonymous source has to be
20 known to this police officer, because he knows
21 where that person lives, and can -- Well, that's
22 what he says. He says the anonymous source
23 resides at 10537 South State.

24 And if he doesn't know the person by

1 name, that would not preclude him from making
2 efforts to find out who it is. He can recognize
3 that person, I would assume.

4 MR. CASSIDY: Sounds to me, Judge, in all due
5 respect to your Honor, that he might have gotten a
6 phone call from a person who says I live at 10537
7 State. And if there is such an address and
8 there's a house there, that could have been
9 easily an inference to draw from that report. It
10 doesn't say it's a confidential informant.

11 THE COURT: Who is the author of this report?

12 MR. CASSIDY: Has to be somebody by the name
13 of D. Kaddigan (phonetics), by reading the bottom
14 of the police report.

15 I mean, Judge, you know, there's a big
16 difference between a confidential informant and an
17 anonymous source. An anonymous source is not
18 someone who is identifiable.

19 THE COURT: When the anonymous source is said
20 to reside at a specific place, that's different
21 than just an anonymous source.

22 In any event, it cannot be resolved
23 without the author of this report coming in and
24 telling us what he means in this document. Bring

1 him in.

2 MR. CASSIDY: I wonder if Counsel made any
3 attempts, since she just tendered that report to
4 us, whether she's talked to the officer, or
5 subpoenaed him, or attempted to talk to him.

6 MS. PLACEK: It's not my duty, number one,
7 Judge.

8 Counsel was present during the motion.
9 He would have known. It was brought up during the
10 motion, Judge.

11 Not only that, but this knowledge was
12 had by every one of the Chicago Police Officers
13 who testified during the motion.

14 MR. MURPHY: Judge, Officer Kaddigan never
15 testified in this motion.

16 THE COURT: Well, bring this officer before
17 the Court. Let's find out what he means before we
18 go any further with it.

19 If it appears as though that person is
20 known to the officer by some means, then we have
21 to deal with it. But we're not going to leave it
22 in a position that we don't know what he's talking
23 about. It sounds like he does know what he's
24 talking about.

1 Gentlemen, I'm going to send for a jury.

2 MS. PLACEK: With all due respect --

3 THE COURT: I'm going to send for a jury, and
4 I'm going to open up this case by telling the jury
5 what's involved in it, the opening address to the
6 jury, the identification of the parties to this
7 litigation, at which time I suspect it will be
8 close to 4:30 or thereafter.

9 And I'm going to send the jury home
10 until tomorrow, late morning.

11 What time can we start, Ms. Vrodolyk?
12 At which time we will start the jury selection
13 process in this case.

14 MS. PLACEK: I can be here at 9:00, Judge.

15 THE COURT: You can't be here at 9:00.

16 MS. PLACEK: Trust me, Judge. I can get up
17 in the morning.

18 THE COURT: All right.

19 I'm going to read to the jury the
20 Indictment in its present form, and that includes
21 the Counts which you have asked leave to amend.
22 I'm going to read them to the jury in their
23 present form.

24 If I grant leave to amend the

1 Indictment, we'll deal with that in the
2 instructions to the jury. But I'm going to tell
3 the jury specifically each count that he's charged
4 with, what he's charged with. I'm going to read
5 to the Jury the State's Answer to Discovery.

6 May I secure the file again, Ms.
7 Vrodolyk?

8 There are several Answers to Discovery
9 in this file. There's an Answer to Discovery,
10 there's a Supplemental Answer to Discovery. And
11 can't tell whether the Supplemental Answer adds
12 new witnesses or deletes witnesses.

13 MR. MURPHY: It adds new witnesses, Judge.
14 Those are witnesses in addition to the witnesses
15 that are listed on the original Answer to
16 Discovery.

17 THE COURT: So, I'd read both the Answer to
18 Discovery and the Supplemental Answer to
19 Discovery, as it pertains to the list of
20 witnesses.

21 That's as far as we'll go with the jury.

22 Tomorrow, I will order them all back.
23 At 11:00 o'clock we will proceed with the jury
24 selection process.

1 MS. PLACEK: The Defense would have no
2 problem with swearing in a panel, Judge. It's
3 still relatively early, if the Court is going to
4 pick.

5 THE COURT: I am not going to do that.
6 Court's in recess. Please bring up a
7 jury.

8
9 (Thereupon, a short recess
10 was taken, after which the
11 following proceedings were had:)

1 MR. MURPHY: Judge, may I address the Court?

2 THE COURT: Yes.

3 MR. MURPHY: Counsel made this motion to
4 dismiss, and obviously we haven't had a lot of
5 opportunity to reflect on it.

6 The Court asked us specific questions
7 with regard to whether or not the information
8 contained in the police report is Brady material.
9 We took a brief recess, we had an opportunity to
10 review the materials which are in this report.
11 And, your Honor, upon further review, it's our
12 position that this is not Brady material.

13 THE COURT: Why not?

14 MR. MURPHY: Your Honor, first of all, this
15 motion was in the possession of the Defense. It
16 was raised before the beginning of this trial,
17 because the Defense had that report in their
18 possession and had a question about its contents.

19 Number two, your Honor, whatever our
20 theory of the case is, if the case is primarily
21 based upon the statement of the defendant, whether
22 the defendant is seen a day, two days, three days
23 after, to our knowledge, she disappeared, that's
24 evidence that the Defense may elicit -- certainly

1 may bring out during the course of this trial.

2 Your Honor, what the Defense is trying
3 to do here, I believe, is trying to force either
4 the State's Attorney's office or this Court to
5 conduct an investigation.

6 They can call Officer Kaddigan. They
7 knew his name, they could contact him and ask him
8 if they were looking for any information.

9 There's been no indication that the
10 Defense has done anything in this case. If they
11 have some theory that the police are trying to
12 conspire, or the State's Attorney's office is
13 trying to conspire to convict this defendant and
14 not give them certain information, they had that
15 report in their possession, Judge.

16 They had the information that's
17 contained in that report. And how that equals a
18 Brady violation, Judge, we fail to see, really.

19 THE COURT: It isn't the report, that
20 document, that is the subject matter of the
21 complaint. It's the identity of the anonymous
22 source that we're talking about.

23 My understanding, which may be
24 incorrect, is that that anonymous source claims to

1 have seen the victim after the date that you claim
2 the victim was killed.

3 Now, that's going to seem to me to
4 become relevant. And it is not the issue of
5 whether or not the State's Attorney is conspiring
6 with anyone. That -- That might be, or seem to
7 be part of the allegation, but that's irrelevant,
8 because it is not relevant whether or not the
9 State's Attorney's office inadvertently or
10 advertently omitted to tender the Brady material,
11 if, in fact, it is Brady material, but was it
12 relevant material to the defendant's defense, and
13 did the State do what it could do to ascertain the
14 identity of that person so the defendant could
15 know?

16 Otherwise, you're going to be confronted
17 with -- or the Court and the Defense are going to
18 be confronted with your objection to the author of
19 that document, about his conversation with the
20 source on the ground that it's hearsay. And the
21 more perfect evidence, obviously, is to have the
22 source in court.

23 But the State is the only one who knows
24 who the source is, the identity of the source.

1 That's what makes it Brady material, if at all.

2 And I'm not saying to you definitively
3 that it is Brady material. It looks like it. It
4 looks like it.

5 And that's why I said bring the officer
6 in. We'll find out what his knowledge is, and
7 what he meant by that statement.

8 But it seems as though he has some
9 information about that source that would lead to
10 the disclosure of the identity; and if so, the
11 Defense needs to know that so they can subpoena
12 the person so as to overcome your objection of his
13 -- this is clearly the objection you're going to
14 make. And then I have to decide whether or not
15 Chambers versus Mississippi is applicable to it.

16 And so, I'd like to avoid the more
17 difficult question by answering the obviously easy
18 question.

19 MR. MURPHY: Judge, first of all, we don't
20 know, obviously -- I don't think we could say
21 with certainty when the victim died.

22 THE COURT: I know. But you're going to do
23 your best to predicate a time of death, and the
24 Defense has a right to try to meet that, Mr.

1 Murphy. And it isn't dependent upon your
2 completeness of your theory of the case.

3 The Defense has some right to introduce
4 evidence also. And where that evidence and the
5 ability of them to adduce it lies within the
6 knowledge of the State, then, it should be
7 disclosed.

8 MR. MURPHY: But, Judge, I might add, too, at
9 this particular point, this case is -- according
10 to what my information is, the defendant was in
11 custody or at least was at the police station
12 around August 8th -- August 9th, 1988. This case
13 has been on the call for in excess of two years.
14 I don't know how long the Defense has been in
15 possession of this report.

16 It's interesting that their question
17 would come up literally minutes before we begin
18 jury selection, and certainly it has never been
19 raised to myself or to Mr. Cassidy at any time
20 before this. And I have been in the courtroom
21 since May of this year.

22 THE COURT: That is not going to inhibit us
23 from inquiring into the knowledge of that police
24 officer.

1 It may very well be that this issue will
2 go away, but I'm going to find out what he knows,
3 and who this person is, if he can tell us, and
4 what conversations he had, and what predicated
5 him, what motivated him to write that specific
6 language in his report.

7 MS. PLACEK: We would ask that the police
8 officer be made the Court's witness, not informed
9 as to the specifics, Judge, or prepared,
10 so-to-speak.

11 I'm not blaming these gentlemen, Judge,
12 and I am not impugning any improper conduct. But
13 in my experience, sometimes police officers --

14 THE COURT: I'm not going to order the
15 lawyers not to talk to witnesses. And I will
16 assess the credibility of the witnesses based upon
17 the evidence that is adduced at that time. But
18 I'm not going to order either side not to talk to
19 witnesses. That seems to be sufficient on that
20 issue.

21 You can have the police officer here
22 tomorrow. We'll make that inquiry. And at least
23 it is conceivable that the whole issue will go
24 away or be resolved without having to make a

1 major, major issue out of this limited inquiry.

2 MR. MURPHY: Judge, I understand the Court's
3 ruling.

4 I would just also indicate at this point
5 we have no idea what the availability of this
6 officer is, if any. We have never tried to reach
7 him.

8 THE COURT: If he's unavailable, Mr. Murphy,
9 then we will deal with the consequences of that as
10 Chambers versus Mississippi impacts it. We can
11 overcome those problems.

12 We have to first determine whether or
13 not he's going to be available before we can reach
14 that step.

15 MS. PLACEK: With all due respect to the
16 State, Judge, the State didn't have some of the
17 reports that were tendered. We only have
18 exculpatory statements by the Defendant. I take
19 it no inculpatory statements popped up. There was
20 a statement made that we're relying on -- relying
21 on a statement made by the defendant.

22 THE COURT: Ms. Placek, I'm not going to go
23 into the discovery that has been interchanged
24 between you. It's not my role to make certain

1 that discovery has properly been tendered by both
2 sides.

3 (Thereupon, the following
4 proceedings were had in
5 the presence and hearing
6 of the prospective jurors)
7 (Venire sworn)

8 THE CLERK: Hugh Miles. Linda Palarzik.
9 Nadine Bird. Hattie Mae Griffin. Anthony Slaton.
10 Kevin Max. Ida Worland. James Hyer. John
11 Zeeler. Stephanie Boone. Sandra Cashana.
12 Warren Pluton. Alvin Turner. Steven Klean. (All
13 names spelled phonetically).

14 (Thereupon, there was a rotation
15 of Official Court Reporters)

1 STATE OF ILLINOIS)
) ss:
2 COUNTY OF C O O K)

3 IN THE CIRCUIT COURT OF COOK COUNTY
4 COUNTY DEPARTMENT-CRIMINAL DIVISION

5 THE PEOPLE OF THE)
6 STATE OF ILLINOIS)
) Case No. 88 CR 12517
7 -VS-)
) Charge: Murder
8 JEROME HENDRICKS.)

8 REPORT OF PROCEEDINGS

9 BE IT REMEMBERED that the above-entitled
10 cause came on for hearing before the Honorable LEO E.
11 HOLT, Judge of said court, on the 5th day of
12 February, 1991.

13 PRESENT:

14 HON. JACK O'MALLEY,
15 State's Attorney of Cook County, by:
16 MR. JOHN MURPHY, and
17 MR. SCOTT CASSIDY,
18 Assistant State's Attorneys,
19 on behalf of the People;

20 MR. RANDOLPH STONE,
21 Public Defender of Cook County, by:
22 MR. VINCENT LUFRANO, and
23 MS. MARIJANE PLACEK,
24 Assistants Public Defender,
on behalf of the Defendant.

22 Nicola Peel Vogelgesang
23 Official Court Reporter
24 16501 S. Kedzie Parkway
Markham, Illinois 60426

1 THE CLERK: Sheet 5. Line 15. Jerome Hendricks in
2 custody.

3 MR. COLEMAN: Could we pass this matter so I can
4 get Mr. Murphy?

5 THE COURT: Pass.

6 MS. PLACEK: By the way, Judge, there were no
7 phones that called out yesterday, Judge.

8 THE COURT: Mr. Hendricks, we'll call you right
9 back.

10 (Case passed.)

11 THE CLERK: Sheet 5. Line 15. Jerome Hendricks.
12 In custody.

13 THE COURT: Good afternoon.

14 MS. PLACEK: Good afternoon, Judge.

15 THE COURT: Nice to see you.

16 MS. PLACEK: Nice to be seen. Judge Karnezis would
17 not let me out of the courtroom yesterday. I'm ready as
18 soon as we dispose of several motions.

19 THE COURT: I'm going to -- What motions in limine
20 do you have?

21 MS. PLACEK: There would be -- there's a Brady
22 motion, Judge, that we were just turned over -- certain
23 material just got to me. It was given to Mr. Lufrano as
24 to army records as to certain GF's we may or may not

1 have. There's a motion in limine.

2 THE COURT: G --

3 MS. PLACEK: Again, progress reports. And there's
4 a motion dealing with other crimes, other bad acts. And
5 just a motion for clarification as to why certain things
6 were turned over to us obviously at the request of the
7 State's (inaudible).

8 THE COURT: Have you and Mr. Hendricks made a
9 decision as to how you're going to handle --

10 MS. PLACEK: Not as yet, Judge.

11 THE COURT: Do you think you will be prepared to
12 make that decision by 1:30?

13 MS. PLACEK: Definitely, yes, Judge. Oh, yes.

14 THE COURT: All right. I'm going to recess court
15 for the noon hour. We will reconvene at 1:30.

16 Hopefully, we can resolve the pretrial motions that
17 counsel has just mentioned. And depending upon what
18 decision is made in regard to the witness and possible
19 Witherspooning of this jury, which should be, if the
20 jury is going to be Witherspooned, then counsel and the
21 Court will either in open court or in chambers lay out
22 the method for the impaneling of this jury.

23 If the jury is not going to be Witherspooned,
24 then we will proceed in the normal method that we

1 impanel a jury, Miss Placek, and do it on that --

2 MS. PLACEK: I understand.

3 THE COURT: Mr. Lufrano can help, and I will
4 further elucidate.

5 MS. PLACEK: No, Judge. I think I know the Court's
6 methods. We, of course, if there is a determination to
7 Witherspoon, we'd be asking for an in camera.

8 THE COURT: I'm sure you are. We'll take those
9 problems up at 1:30.

10 MR. MUPRHY: We also filed two motions which have
11 been placed in the court file, tendered to the defense.

12 MS. PLACEK: They were.

13 THE COURT: I just went through the court file, and
14 I find no answer to discovery

15 MS. PLACEK: Mr. Lufrano brought that up, Judge. I
16 have a stamped copy of an answer that I filed and I
17 brought to supplement the court file. The only thing
18 that was -- the only statement I would make, Judge, is,
19 of course, we would call whatever witnesses who were
20 listed either in the police report or who in fact were
21 called by either side during the pendency of the motion.
22 Other than that, Judge.

23 THE COURT: You don't need to find it at this
24 particular point in time. I would simply remind you of

1 the obligation that counsel has to make the record
2 reflect the filings and to be accurate.

3 MS. PLACEK: Yes, Judge.

4 THE COURT: That's counsel's responsibility. And
5 so I will, you know, hold to you that responsibility.

6 MS. PLACEK: No problem.

7 THE COURT: No problem with that. So we'll see you
8 at 1:30.

9 MS. PLACEK: No problem

10 MR. MUPRHY: Could I ask for a copy to the answer,
11 too?

12 THE COURT: See you at 1:30

13 MS. PLACEK: Thank you.

14 THE COURT: Court's in recess until 1:30 p.m..

15 (Case passed.)

16 THE CLERK: Sheet 5. Line 15.

17 MS. PLACEK: May the defendant be seated, Judge?

18 MR. MUPRHY: Judge, initially make a motion to
19 amend certain counts of the indictment to conform with
20 the statutory requirements.

21 THE COURT: All right, I have the indictment before
22 me. Which count are you referring to?

23 MR. MUPRHY: Judge, count 3. First degree murder.
24 Based on a kidnapping. People would seek to amend or to

1 insert between "kidnapping" and "strangle" the
2 subsection -- the section chapter, Chapter 36 Section
3 10-1-a (1).

4 MS. PLACEK: Although I can't state surprise,
5 Judge, I would state that there would be an objection if
6 this goes into the realm of substantive rather than a
7 procedural defect, Judge.

8 THE COURT: State?

9 MR. MUPRHY: Judge, what we're doing, merely is
10 giving the defendant notice as to exactly what section,
11 what section of Chapter 38, what particular section the
12 kidnapping is based on. Which in fact is part of the
13 indictment. This count 13. It's the same charge.

14 THE COURT: Well, from my view, and perhaps
15 incorrectly, but from my view, delineating the
16 kidnapping statute is unnecessary to this indictment.
17 It's surplusage. This indictment as it is, as it is
18 laid, in the Courts's view, is sufficient.
19 Consequently, amending it for the purposes of adding the
20 statutory section for kidnapping is surplusage, also.
21 Consequently, I'm going to allow it. What is that
22 section? Ten dash?

23 MR. MUPRHY: Your Honor, it's Section 10 dash one
24 dash A parentheses one.

1 THE COURT: All right. What other count of the
2 indictment?

3 MR. MUPRHY: Your Honor, we'd also be seeking leave
4 to amend count four to include -- that's also a first
5 degree murder based on other felony. We would seek
6 leave to insert between "criminal sexual assault" and
7 "strangled" also Chapter 38 Section 12 dash 13-a (1).

8 THE COURT: Miss Placek?

9 MS. PLACEK: There would be an objection based on
10 -- No argument based on the Courts reviewing.

11 THE COURT: The same applies to count four as the
12 basis for allowing the amendment for count 3. It will
13 be allowed. State?

14 MR. MUPRHY: Judge, in addition to that, there are
15 a number of counts which allege the use of force and by
16 threat of force. We would seek leave to amend that
17 language to "use of force or by threat of force," which
18 is consistent with the statutory language, Chapter 38.
19 That would be count five, Your Honor. In other words,
20 Judge, we would seek leave to strike "and," where it
21 indicates "by use of force and by the threat of force,"
22 instead of its place, "or."

23 THE COURT: Miss Placek?

24 MS. PLACEK: Judge, it struck me that it would be

1 somewhat ridiculous to object to an and/or being
2 changed. Suggestion, Judge, unless Counsel is saying
3 that this was not an oversight or typographical error
4 but rather that that was in fact willfully put down by
5 his office.

6 THE COURT: Are you asking to strike the word "and"
7 and insert "or," or are you adding?

8 MR. MUPRHY: Yes, Judge. We're seeking leave to
9 strike the word "and" and insert in its place "or."

10 THE COURT: You say that that is a formal or
11 informal omission?

12 MS. PLACEK: I'm saying that basically, when
13 reading same indictment, I have problems as counsel.
14 I'm asking that in fact, and I'm asking a question of
15 the Court to ask counsel, if in fact by moving for this
16 amendment is he not, is he admitting in fact that this
17 was somewhat out of the category of oversight by his
18 office, and in fact a willful distinction was made at
19 the time of in fact the typing of the indictment?

20 THE COURT: Well, it's no way for him to know.

21 MS. PLACEK: I would just suggest, Judge, that
22 imputed knowledge of the office. In other words,
23 knowledge of one is knowledge of all. Would in fact
24 respectfully disagree. And this is why I'm asking the

1 question before any argument is made.

2 THE COURT: The problem that I have, and I don't
3 know whether we're articulating the same thing or not,
4 Miss Placek, is that to change the word "and" and add
5 the word "or," is to change the substance of the
6 indictment, which cannot be done by an amendment.

7 MS. PLACEK: I understand, Judge. And that's what
8 exactly I was looking for the question of counsel.

9 THE COURT: Well, it wouldn't make any difference
10 what position his office takes. If in fact one is
11 unable to determine other than by the language of the
12 indictment what the grand jury intended to charge. And
13 we can't charge -- the State's Attorney cannot charge
14 this defendant at this point.

15 MS. PLACEK: I understand, Judge.

16 THE COURT: The grand jury has charged him, and if
17 they charge him improperly, only the grand jury can
18 straighten that out.

19 MS. PLACEK: No, Judge. I have a full
20 understanding of that. What I'm suggesting to the
21 Court, Judge, is that there's a reason I was looking for
22 a commitment, Judge, before argument was to be made.
23 But since the Court seems to have committed the State,
24 I, of course, would now -- I would suggest that the

1 language the Court used committed the State as that,
2 quite frankly, this was not in the language of a mere
3 oversight, but a willful matter, my suggestion would be
4 that I would not only have strenuous objection, but
5 depending on the evidence as proven at trial, a probable
6 later motion as to that indictment.

7 THE COURT: Mr. Murphy, I'm going to hold count
8 five in abeyance.

9 MS. PLACEK: I think counsel was dealing, Judge,
10 with respect to counts five, six, and seven.

11 THE COURT: Is that correct, Mr. Murphy?

12 MR. MUPRHY: Judge, actually, the same -- I would
13 make the same motion with respects to respect to five,
14 six, seven, eight, and nine.

15 MS. PLACEK: We would --

16 MR. MUPRHY: Also count eleven.

17 MS. PLACEK: Judge, proffer same exception as
18 previously stated, Judge. And ask for a ruling on same.

19 THE COURT: All right, I'm going to hold -- take
20 them under advisements until I have had an opportunity,
21 until I have had an opportunity to check some of the
22 authorities and see what if any guidance I can get from
23 that. I have a feeling -- Well, we will see what that
24 amounts to.

(Whereupon, a rotation of
Court Reporters occurred.)

1 /WHEREUPON the following
2 proceedings were taken by
3 Ms. Rella Jordan, Official
4 Court Reporter:)

5 THE COURT: Good afternoon, ladies and
6 gentlemen, I am Judge Leo Holt, I am one of the
7 judges of the Circuit Court of Cook County

8 You have been called here today to sit as
9 jurors in the case of the People of the State of
10 Illinois versus Jerome Hendricks.

11 I want to talk to you at this time about
12 some basic principles of the law that apply to all
13 criminal cases. This will help you follow the law
14 and the evidence in this case. These are not your
15 final and complete instructions, those will come
16 after you have heard all the evidence and the
17 final arguments of the lawyers.

18 When the time comes for giving
19 instructions, I will read them to you and you will
20 get them in writing along with verdicts for your
21 consideration.

22 You must follow the law as I give it to
23 you. You may not, I repeat, you may not use your
24 own idea of what the law is or ought to be

1 The defendant in this case, Jerome
2 Hendricks, is charged with the offenses of first
3 degree murder, aggravated criminal sexual assault,
4 criminal sexual assault, kidnapping, aggravated
5 kidnapping and unlawful restraint.

6 More specifically it is charged that the
7 defendant, Jerome Hendricks, on or about August 1,
8 1988, at and within the County of Cook, State
9 of Illinois, committed the offense of first degree
10 murder, in that he without lawful justification
11 intentionally and knowingly strangled and killed
12 Denise Johnson in violation of Section 38 - 1-2 A,
13 of the Criminal Code of the State of Illinois.

14 It is further charged that the defendant
15 committed the offense of First Degree Murder in
16 that on or about August 1, 1988 at and within the
17 County of Cook, State of Illinois, the defendant,
18 Jerome Hendricks, committed the offense of First
19 Degree Murder in that he, without lawful
20 justification strangled and killed Denise Johnson
21 knowing that such strangling created a strong
22 probability of death or great bodily harm to
23 Denise Johnson in violation of Chapter 38 Section
24 9-1.2 2 of the criminal code of the State of

1 Illinois.

2 It is further charged that Jerome
3 Hendricks committed the offense of First Degree
4 Murder, in that on or about August 1, 1988 at and
5 within the County of Cook, State of Illinois, he
6 committed first degree murder in that without
7 lawful justification while committing a forcible
8 felony, to-wit, kidnapping, strangled and killed
9 Denise Johnson in violation of Chapter 38, Section
10 9-1-A. 3 of the criminal code of the State of
11 Illinois.

12 It is further charged that Jerome
13 Hendricks committed the offense of First Degree
14 Murder in that on or about August 1, 1988 at and
15 within the County of Cook, State of Illinois, he
16 committed the offense of First Degree Murder in
17 that without lawful justification while committing
18 a forcible felony, to-wit, criminal sexual
19 assault, strangled and killed Denise Johnson in
20 violation of Chapter 38, Section 9-1-A. 3 of the
21 criminal code of the State of Illinois.

22 It is further charged that Jerome
23 Hendricks committed the offense of aggravated
24 criminal sexual assault in that on or about August

1 1, 1988 at and within the County of Cook, State of
2 Illinois, Jerome Hendricks committed the offense
3 of aggravated criminal sexual assault in that he
4 committed an act of sexual penetration upon Denise
5 Johnson, to-wit: contact between Jerome Hendricks'
6 penis and Denise Johnson's vagina, by the use of
7 force and by the threat of force and Jerome
8 Hendricks used an object, to-wit, shoe lace
9 fashioned or utilized in such a manner as to lead
10 Denise Johnson under the circumstances reasonably
11 to believe it to be a dangerous weapon in
12 violation of Chapter 38, Section 12-14-A, paren.
13 1 of the criminal code of the State of Illinois.

14 It is further charged that Jerome
15 Hendricks committed the offense of aggravated
16 criminal sexual assault in that on or about August
17 1, 1988 at and within the County of Cook, State of
18 Illinois, Jerome Hendricks committed the offense
19 of aggravated criminal sexual assault in that he
20 committed an act of sexual penetration upon Denise
21 Johnson, to-wit, contact between Jerome
22 Hendricks's penis and Denise Johnson's vagina by
23 the use of force and by the threat of force and
24 caused bodily harm to Denise Johnson by strangling

1 her in violation of Chapter 38, Section 12-14 A.
2 Paren. 2 of the Criminal Code of the State of
3 Illinois.

4 It is further charged that Jerome
5 Hendricks committed the offense of aggravated
6 criminal sexual assault in that on or about August
7 1, 1988 at and within the County of Cook, State of
8 Illinois, he committed the offense of aggravated
9 criminal sexual assault in that he committed an
10 act of sexual penetration upon Denise Johnson
11 to-wit. contact between Jerome Hendricks's penis
12 and Denise Johnson's vagina by the use of force
13 and by the threat of force and Jerome Hendricks
14 acted in such a manner, to-wit. strangling her as
15 to endanger the life of Denise Johnson in
16 violation of Chapter 38, Section 1-14- A. 2 of the
17 criminal code of the State of Illinois.

18 It is further charged that Jerome
19 Hendricks committed the offense of aggravated
20 criminal sexual assault in that on or about August
21 1, 1988 at and within the County of Cook, State of
22 Illinois, he committed the offense of aggravated
23 criminal sexual assault in that he committed an
24 act of sexual penetration upon Denise Johnson

1 co-wit, contact between Jerome Hendricks's penis
2 and Denise Johnson's vagina by the use of force
3 and by the threat of force and the criminal sexual
4 assault was perpetrated during the course of the
5 commission of a felony of First Degree Murder by
6 Jerome Hendricks in violation of Chapter 38,
7 Section 12-14-A. 4 of the criminal code of the
8 State of Illinois.

9 It is further charged that Jerome
10 Hendricks committed the offense of aggravated
11 criminal sexual assault in that on or about August
12 1, 1988 at and within the County of Cook, State of
13 Illinois, he committed the offense of aggravated
14 criminal sexual assault in that he committed an
15 act of sexual penetration upon Denise Johnson
16 co-wit, contact between Jerome Hendricks's penis
17 and Denise Johnson's vagina by the use of force
18 and by the threat of force and the criminal sexual
19 assault was perpetrated during the course of the
20 commission of the felony of aggravated kidnapping
21 by Jerome Hendricks, in violation of Chapter 38
22 Section 12-14-A. 4 of the criminal code of the
23 State of Illinois.

24 It is further charged that he committed

1 the offense of aggravated criminal sexual assault
2 in that on or about August 1, 1988 at and within
3 the County of Cook, State of Illinois, he
4 committed the offense of aggravated criminal
5 sexual assault in that he was 17 years of age or
6 over and committed an act of sexual penetration
7 upon Denise Johnson, to-wit, contact between
8 Jerome Hendricks' penis and Denise Johnson's
9 vagina and Denise Johnson was under 13 years of
10 age when the act of sexual penetration was
11 committed in violation of Chapter 38, Section
12 12-14-B. 1 of the criminal code of the State of
13 Illinois.

14 It is further charged that he committed
15 the offense of criminal sexual assault in that on
16 or about August 1, 1988 at and within the County
17 of Cook, State of Illinois, he committed the
18 offense of criminal sexual assault in that he
19 committed an act of sexual penetration upon Denise
20 Johnson, to-wit, contact between Jerome
21 Hendricks's penis and Denise Johnson's vagina by
22 the use of force and by the threat of force in
23 violation of Chapter 38, Section 12-13-A, Paragraph 1
24 of the criminal code of the State of Illinois.

1 It is further charged that he committed
2 the offense of concealment of a homicidal death in
3 that on or about August 1, 1988 at and within the
4 County of Cook, State of Illinois, he committed
5 the offense of concealment of a homicidal death in
6 that he concealed the death of Denise Johnson
7 to-wit, by hiding her body in an enclosed garage
8 with garbage bags over her body knowing that
9 Denise Johnson had died by homicidal means in
10 violation of Chapter 38, Section 9-31 A. of the
11 criminal code of the State of Illinois.

12 It is further charged that he committed
13 the offense of kidnaping in that on or about
14 August 1, 1988, at and within the County of Cook,
15 State of Illinois, he committed the offense of
16 kidnapping in that he knowingly and secretly
17 confined Denise Johnson against her will in
18 violation of Chapter 38, Section 10-1A par. 1 of
19 the criminal code of the State of Illinois.

20 It is further charged that he committed
21 the offense of aggravated kidnapping in that on or
22 about August 1, 1988 at and within the County of
23 Cook, State of Illinois, he committed the offense
24 of aggravated kidnapping in that he knowingly and

1 secretly confined Denise Johnson, a child under
2 the age of 13 years, against her will in violation
3 of Chapter 38, Section 10-2 A, Par. 2 of the
4 criminal code of the State of Illinois.

5 It is further charged that he committed
6 the offense of aggravated kidnapping in that on or
7 about August 1, 1988 at and within the County of
8 Cook, State of Illinois, committed the offense of
9 aggravated kidnapping in that he knowingly and
10 secretly confined Denise Johnson against her will
11 and inflicted great bodily harm, to-wit, strangled
12 her in violation of Chapter 38, Section 10-2 A, 2
13 of the criminal code of the State of Illinois

14 It is further charged that he committed
15 the offense of aggravated kidnapping in that on or
16 about August 1, 1988 at and within the County of
17 Cook, State of Illinois, committed the offense of
18 aggravated kidnapping in that he knowingly and
19 secretly confined Denise Johnson against her will
20 and committed a felony, to-wit, first degree
21 murder in violation of Chapter 38, Section 10-2 A,
22 3 of the criminal code of the State of Illinois.

23 It is further charged that he committed
24 the offense of aggravated kidnapping in that on or

1 about August 1, 1988 at and within the County of
2 Cook, State of Illinois, he committed the offense
3 of aggravated kidnapping in that he knowingly and
4 secretly confined Denise Johnson against her will
5 and committed a felony, to-wit, aggravated
6 criminal sexual assault upon her in violation of
7 Chapter 38, Section 10-2 A. Paren. 3 of the
8 criminal code of the State of Illinois.

9 It is further charged that he committed
10 the offense of unlawful restraint in that on or
11 about August 1 1988 at and within the County of
12 Cook, State of Illinois, he committed the offense
13 of unlawful restraint, in that he knowingly
14 without legal authority detained Denise Johnson in
15 violation of Chapter 38, Section 10-3 A. of the
16 criminal code of the State of Illinois."

17 The charge in this case is contained in
18 what is called an indictment.

19 You must remember that an indictment is
20 not to be considered as any evidence against the
21 defendant, nor does the law allow you to infer any
22 presumption of guilt against the defendant simply
23 because he has been indicted

24 In other words, the expression, "Where

1 there is smoke there is fire," has no place in a
2 court of law.

3 The indictment is merely the formal way
4 in which a defendant is placed on trial. Under
5 the law, a defendant is presumed to be innocent of
6 the charges against him. This presumption remains
7 with him throughout every stage of the trial and
8 during your deliberations on the verdict, and is
9 not overcome unless from all the evidence in the
10 case you are convinced beyond a reasonable doubt
11 that the defendant is guilty.

12 The State has the burden of proving the
13 guilt of the defendant beyond a reasonable doubt,
14 and this burden remains on the State throughout
15 the case.

16 The defendant is not required to prove
17 his innocence, nor is he required to present any
18 evidence on his own behalf. He may rely on the
19 presumption of innocence.

20 You are the judges of the facts in this
21 case. That is, you and you alone will determine
22 which witnesses to believe and how much weight to
23 give their testimony.

24 Part of my job is to tell you what

1 evidence you may hear and consider.

2 After you hear all the evidence, the
3 arguments of the lawyers, and my instructions on
4 the law, you will retire to the jury room to
5 determine your verdicts.

6 If you become convinced beyond a
7 reasonable doubt from all the evidence in the case
8 that the defendant is guilty as charged in the
9 indictment, it will be your duty to find him
10 guilty.

11 On the other hand, if after hearing all
12 the evidence you are not convinced beyond a
13 reasonable doubt of the defendant's guilt, it will
14 be your duty to find him not guilty.

15 Whatever verdict you reach, it will be
16 your own and you don't have to explain it or
17 justify it to anyone at any time.

18 It is essential that you not arrive at
19 any decisions or conclusions of any kind until you
20 have heard all the evidence, the arguments of the
21 lawyers and the law that applies to this case.

22 I will say that many times before this
23 trial has ended, because that is the best way to
24 ensure a fair trial for both sides.

1 During the trial, you will hear the
2 lawyers make objections, don't hold it against
3 either side when you hear objections. The lawyers
4 are not trying to keep anything from you. They
5 are doing their job and their duty, and the
6 objections help me and serve an important purpose
7 and that's to make sure you get only proper
8 evidence on the issues in this case.

9 The number of objections made or which
10 side has more objections sustained or overruled
11 must have no affect at all on your consideration
12 of the evidence.

13 The personalities of the lawyers are not
14 an issue in this case and should have no affect on
15 your verdict.

16 There will be times when I will excuse
17 you from the courtroom or we'll excuse ourselves
18 and go over to the side or in my chambers to
19 discuss a point of the law. You should not let
20 that bother or annoy you. The law requires that
21 these discussions be held out of your presence,
22 that is the law's way of being sure you hear only
23 proper evidence.

24 There may be recesses or delays although

1 we will keep those at a minimum. At times we
2 might begin a few minutes later than we
3 anticipated. The reason for that is that we have
4 other cases on our call having nothing to do with
5 this case or with this defendant.

6 We are using the time for a good purpose.
7 So don't feel your time is being wasted if you
8 have to wait for us.

9 At this time, I'm going to introduce to
10 you the participants in this litigation.

11 The People of the State of Illinois are
12 represented by Mr. Jack O'Malley, the State's
13 Attorney of County of Cook, by and through his
14 assistants, Mr. John Murphy.

15 MR. MURPHY: Good afternoon, ladies and
16 gentlemen.

17 THE COURT: And Mr. Scott Cassidy.

18 MR. CASSIDY: Thank you, your Honor.

19 Good afternoon, ladies and gentlemen.

20 THE COURT: The defendant is represented
21 by Ms. Marijane Placek.

22 MS. PLACEK: How do you do, ladies and
23 gentlemen.

24 THE COURT: And Mr. Vincent Lufrano.

1 MR. LUFRANO: Good afternoon.

2 THE COURT: And the defendant is
3 Mr. Jerome Hendricks.

4 THE DEFENDANT: (The defendant stands)

5 THE COURT: Now, ladies and gentlemen,
6 shortly I'm going to read to you at this time a
7 list of names of the potential witnesses in this
8 case.

9 If you recognize any of these names as
10 persons you know, or may be acquainted with, when
11 you are individually questioned, if you will bring
12 that to my attention we will discuss it further at
13 that time.

14 The following persons may or may not be
15 called during the course of the trial of this
16 case:

17 "Stephanie Smith; Phyllis
18 Williams; Terry Davis; Kelly
19 Wallace; Russ Ewing.

20 "Doctor John Fitzpatrick.

21 "Robert Tovar; Mike Gatto,
22 personnel from South Shore
23 Hospital.

24 "Officer Cummings; Dr.

1 Kolmar, Doctor Cuesay, Edith
2 Cordini, C- O- R- D- I- H-
3 I-.

4 Caroline Strong.

5 "Personnel from Roseland
6 Community Hospital.

7 "Assistant State's Attorney
8 Anna Demacopoulos.

9 "Doctor Mae Jumbelic, J- U-
10 M- B- E- L- I- C-.

11 "Estelle Fields, Jeremy
12 Thomas.

13 "Caroline McCoy, Paulette
14 Townsend, James Hall, Yolanda
15 Hill, Jesse Proctor, Jackie
16 Delaney.

17 Michael Walker, Leon Anderson.

18 And the following police
19 officers: "Michael
20 Baker, Michael Roy and Jo Ann
21 Ryan, John, last name, Y- U-
22 C- A- I- T- I- S-; Albert
23 Wolff; J. McDonald's, A.
24 Wolff; Detective Wierba, V

1 Steller. T. McQue; Det.

2 Pasevento; T. Hughes; J.

3 Fassi, F- A- S- S- I-.

4 "C. Powell Moore; Kay Barry;

5 S. Brownfield; Officer

6 McWeeny.

7 "A. Lazar, L. Kerkstran, and

8 personnel from the Chicago

9 Police Department Crime Lab

10 Tower."

11 Ladies and gentlemen, I will be asking
12 you some questions about yourselves and then the
13 lawyers will ask. You must not feel we are trying
14 to embarrass you, put you on the spot or pry into
15 your personal affairs. It is merely our way of
16 learning something about you so that the lawyers
17 can make informed decisions in the jury-selection
18 process.

19 Please be frank, complete and open in
20 your answers, that is the way to insure fairness
21 to both sides.

22 For those who are chosen as jurors, I
23 will give you this warning now and you will hear
24 it again. Please do not discuss this case with

1 anyone, not your friends, your families or among
2 yourselves, and don't let anyone discuss it with
3 you until you retire to the jury room to
4 deliberate. You may consider that an order of
5 this Court. Any attempt to violate it should be
6 reported to me at once.

7 The fair thing to do is to wait until you
8 have heard everything before you begin discussing
9 the case among yourselves and that will be done
10 only in the jury room when you begin your
11 deliberations. When deciding this case, you must
12 not allow sympathy or prejudice to influence your
13 verdict.

14 Our system of the law is based on the
15 principle that a jury will decide the case on the
16 law and on the evidence. That is the oath you
17 will take as jurors and I know that you will be
18 faithful to it.

19 Now, ladies and gentlemen, it is 4:22
20 p.m.. You were told both prior to your coming to
21 the building today and again, perhaps, unpubbedly
22 so upon your arrival here at the courthouse that
23 our system of jury service is one day-one trial.

24 Each of you are now involved in one

1 trial. And each of you belongs to me until this
2 jury has been impaneled, therefore, each of you is
3 required to report back here tomorrow and until we
4 have impaneled this jury in its entirety, each of
5 you has that as your obligation.

6 I'm going to ask each of you to return
7 here tomorrow at 11 a.m. Those of you who are in
8 the jury box will please take the same seats in
9 the jury box that you now occupy.

10 Those of you who are in the spectator
11 seats may sit anywhere you so desire.

12 When you arrive at the courthouse, please
13 do not enter my courtroom. I suppose we'll try
14 to have available for you a courtroom or one or
15 more jury rooms where you can be seated if the
16 Court is in session until we are ready to commence
17 the jury-selection process in this case, but in no
18 circumstances do I want you to come into my
19 courtroom until we are ready to proceed with the
20 jury-selection process in this case.

21 Again, we wish you a good evening. please
22 do not discuss the case among yourselves or with
23 members of your family. The sheriff has a check
24 for each of you before you leave tonight and we

1 will see you tomorrow morning at 11 a.m..

2 Have a good evening.

3 (Whereupon the following

4 proceedings were had out of

5 the presence of the jury:)

6 THE COURT: Anything further?

7 MS. PLACEK: We may still have several
8 motions in limine, Judge..

9 THE COURT: I might indicate to Counsel
10 that consistent with my memorandum regarding jury
11 trial memorandum, I am entitled as of this day
12 instructions, which I do not have from either
13 side.

14 Ms. Placek?

15 MS. PLACEK: Your Honor, very, very
16 briefly, in hopes to the point of going to other
17 motions in limine that we have had, as to other
18 motions in limine, the Court has made certain
19 rulings. As I understand, we have a motion in
20 limine precluding the State from, in fact, dealing
21 with the house and garage where the victim was
22 found.

23 During the motion, there was an
24 allegation made by one of the police officers

1 specifically, and one of the civilian witnesses
2 also, that this house, this garage had, in fact,
3 lied empty since -- and I think now what is
4 referred to as the 1984 battery, and that, in
5 fact, this garage was the place where Jerome
6 Hendricks had committed what was charged and what
7 we have information was, a battery, and it had
8 lain empty because the people were so terrified
9 that they were forced to move out rather than live
10 next door to Jerome Hendricks.

11 When reading the transcript and defense
12 Counsel and myself and my co-counsel can only feel
13 unless we made the motion to preclude the State
14 from bringing this up during the sum and substance
15 of their case dealing with relevancy, that, in
16 fact, we would somehow be derelict in our duty and
17 we would be asking that the Court, in fact, limit
18 the State as to this issue.

19 THE COURT: State?

20 MR. MURPHY: Judge, I am not sure if I
21 understand exactly what the defense want from us.

22 THE COURT: She wants you to abstain or
23 refrain from putting in evidence that the persons
24 who lived in the house where the garage is

1 associated with moved out and left the garage in
2 what appears to be an abandoned condition because
3 they were afraid of the defendant.

4 MR. MURPHY: Judge, I believe Counsel is
5 incorrect in that she is referring to the battery,
6 in fact, that was another case, indecent liberty
7 with a child that there was a finding of not
8 guilty.

9 Nonetheless, your Honor, we have no
10 intention of eliciting evidence along that line as
11 to people moving out in '84 and why they moved
12 out.

13 THE COURT: That apparently solves that
14 problem.

15 MS. PLACEK: The reason we brought this
16 up, Judge, State's Attorney Ronkowski stated that
17 this was a theory of relevancy brought in. On
18 reliance of the State we will take their
19 representation.

20 The last thing subpoenaed by the State
21 and the last thing tendered to my co-Counsel in
22 this matter is, in fact, army records of the
23 defendant. The reason that we are asking about
24 this, Judge, and I believe that my prior

1 predecessor did file a motion as to any
2 aggravation or mitigation that would be used in
3 the event it becomes necessary to go to a death
4 hearing, we would be just interested in knowing
5 since we could see no relevancy in going through
6 these records whether or not they were to be used
7 in the State's trial, so this can take the realm
8 of a motion to disclose.

9 THE COURT: Ms. Placek, you and the State
10 can discuss that, no need for the Court to become
11 involved in that matter, unless it's sought to be
12 introduced in evidence in some form. I'm not here
13 trying to clear up Discovery problems for you.

14 MS. PLACEK: Very briefly, also, Judge,
15 along with the new Discovery that we have received
16 from the State, there was the complete prisoner
17 and jail record of the defendant. Since force
18 doesn't seem to be indicated as to the motions,
19 since there is no acclamation nor any motion of
20 force put forward as to whatever, but there seems
21 to be an indication on the intake sheet when asked
22 whether or not the defendant used any drugs, the
23 answer by the defendant allegedly and written by
24 the worker was "cocaine." Again this would take

1 the form of a motion in limine as to whether or
2 not the State was planning since we wondering why
3 subpoena to use this information as part of bad
4 acts or is the so-called broad brush.[]

5 THE COURT: Again, Ms. Placek, it is not
6 within my province to try to educate you as to
7 what the possible theory of State's case is going
8 to be. If the evidence is not material and
9 relevant and they seek to introduce it, you make
10 the proper objections and I will rule on it.

11 MS. PLACEK: Thank you.

12 Next, Judge, we would further state that
13 as to the answering of ready this morning, we are
14 ready depending on what the Court rules on our
15 Brady motion and also depending on what is
16 elicited during the evidentiary hearing held
17 before trial tomorrow.

18 THE COURT: I have no response to that.
19 Do you, Mr. Cassidy or Mr. Murphy?

20 MR. MURPHY: No, Judge.

21 MR. CASSIDY: No, Judge.

22 THE COURT: Anything further?

23 MS. PLACEK: No, Judge.

24 I'm finally quiet.